

REMARKS

Reconsideration is respectfully requested.

Initially, the Examiner is respectfully requested to note the Information Disclosure Statement submitted concurrently herewith.

The claims under consideration are claims 1-8, plus newly added claims 9-13, wherein the oil cake is stated to be cotton seed oil cake.

In paragraph 2 on page 2 of the Office Action, claims 1-4 are rejected under the second paragraph of 35 U.S.C. § 112 as being indefinite in the use of the phrase “functional food”. The Examiner states that the phrase “functional food” is not clearly defined in the claims or in the specification.

Reconsideration is respectfully requested concerning the 35 U.S.C. § 112 rejection. The term “functional food” is defined in the paragraph beginning at page 10, line 20 of the application as filed. Thus, the term “functional food” as used in the specification and claims has a specific meaning which is readily understood to the skilled artisan from the specification itself. Accordingly, the term is not indefinite and the term is properly used to claim what Applicant regards as the invention. With this clarification, Applicants request that the rejection under the second paragraph of 35 U.S.C. § 112 be withdrawn.

In paragraph 4 of the Office Action, claims 1, 7 and 8 are rejected under 35 U.S.C. § 102(b) as being anticipated by Sapporo.

In Sapporo, spent barley grains obtained from beer production are dipped in an organic solvent after which an extract obtained therefrom is separated and further purified into barley

malt oil containing ceramide derivatives. The issue raised by the Examiner appears to be whether the spent barley grains used as a starting material in Sapporo are an oil cake.

Sapporo (U.S. Patent No. 6,316,032 submitted herein as part of an Information Disclosure Statement and based on WO 99/33939) has the following description:

“More specifically, in the charging step which is conducted first in the production of beer, wort is obtained by filtration of mash after saccharification, during which procedure spent grains is separated and discharged in large amounts as a by-product” (second column, lines 14-18 of U.S. 6,316,032).

As is clear from this description, the spent grains are not the oil cake of the present invention which is obtained after expressing oil from the plants (page 6, lines 15-16 of the present specification). Thus, the oil cake is different from the spent grains of Sapporo.

Applicants must respectfully submit that the spent grains of Sapporo would not teach or suggest the skilled artisan the use of the oil cake of the present invention in deriving a sphingoglycolipid. Accordingly, the anticipation rejection of paragraph 4 of the Office Action should be reconsidered and withdrawn and furthermore, any possible obviousness rejection is also unattainable based on Sapporo.

In paragraph 7 at the top of page 4 of the Office Action, the Examiner rejects claims 1-4 under 35 U.S.C. § 103(a) as being obvious to one of ordinary skilled in the art over NOF CORP JP 11-113530.

The Examiner states that NOF CORP discloses a health food containing ceramide, where the ceramide is extracted from bovine brain, wheat, rice, soybeans, spinach, or yeast. The

purpose of the health food is for a skin-moisturizing effect, etc. The Examiner considers the functional foods of claims 1-4 to be obvious variations of NOF CORP because the sphinogoglycolipid of Applicants' claims would be essentially the same as or an obvious variation of the sphinogoglycolipids of NOF CORP.

Applicants respectfully submit that comparative experimentation in the application as filed establishes that the sphinogoglycolipids prepared in accordance with the present invention when used in a functional food are superior to functional foods containing sphinogoglycolipids disclosed by NOF CORP, such as of wheat and rice origin. In this regard, the Examiner is referred to Test Example 1 and Test Example 2 of the present application.

Test Example 1 begins at the middle of page 32 of the application. The results in Table 1 at the middle of page 33 of the application with regulated intake show the effect in improving skin water content of the food as set forth in claim 1 of the present application as compared to taking sphinogoglycolipids of wheat flour or rice bran origin. Similar results are shown in Test Example 2 regarding improvement in skin roughing. See Table 2 at page 35 of the application. Thus, Applicants submit that the application as filed shows the unexpected nature of the present invention wherein the sphinogoglycolipids can be derived from a tuberous and corm vegetable, as compared to the use of the wheat and rice origin products disclosed by NOF CORP. Clearly, the present invention is unobvious over NOF CORP.

In paragraph 8 of the Office Action, claims 5 and 6 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Q.P. CORPORATION.

Claims 5 and 6 are the claims directed to a cosmetic comprising sphinogoglycolipid derived from a tuberous and corm vegetable or oil cake.

Q.P. CORPORATION is cited as disclosing sphinogoglycolipids obtained from rice bran used in cosmetics. The Examiner concludes that the sphinogoglycolipid derived from tuberous and corm vegetable or oil cake of claim 5 would be the same as or obvious over the sphinogoglycolipid derived from rice bran of Q.P. CORPORATION when used in a cosmetic.

Test Example 5 compares cosmetic compositions, including Comparative Example 9 prepared from rice bran. The tested products are comparable in containing 50 mg of sphinogoglycolipids in 10 ml of water. In Table 5 at page 51, the cosmetics of the present invention provide improved water content to the skin, including comparison with Comparative Example 9 based on rice bran.

In conclusion, the comparative experimentation of the application as filed, shows that the sphinogoglycolipids obtained from the sources used in the present invention are different and superior to those obtained from rice bran and provide a superior cosmetic effect when used as a cosmetic. This could not be taught nor suggested by Q.P. CORPORATION.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

AMENDMENT UNDER 37 C.F.R. § 1.111
U.S. APPLN. NO. 10/088,301

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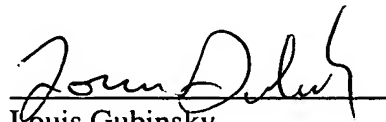
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